IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3570 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRUTLAL GOKALDAS TANNA & ORS.

Versus

MANAGING DIRECTOR

Appearance:

1. Special Civil Application No. 3570 of 1998

MS.KRINA C. THAKKAR FOR MR YOGESH S LAKHANI for Petitioner No. 1-16

MR KIRIT J MACWAN for Respondent No. 1-2

SERVED BY RPAD - (N) for Respondent No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 07/04/2004

ORAL JUDGEMENT

The petition is filed by as many as 16 retired Bank officers of Central Bank of India, who retired between 01.11.1992 to 31.10.1994 praying that the action of the respondents of giving benefit of gratuity on the basis of revised pay scale with effect from 01.11.1994 be quashed and set aside and that the respondents be directed to give benefit of gratuity to the petitioners with effect from 01.07.1993. It is also prayed that, `the act of the respondents in fixing different dates for pay scale and gratuity be declared to be discriminatory, arbitrary, illegal and violative of Article 14 of the Constitution of India'.

2. The facts of the case are that the petitioners having retired from service between 01.11.1992 to 31.10.1994, were paid gratuity on the basis of pay which they were drawing on the date of their retirement. Subsequently, a settlement was arrived at between the management and the Indian Banks' Association (IBA) and accordingly the respondent-Central Bank of India, on July 14, 1995, framed regulations for salary revision for its officer-employees governed by Officers' Service Regulations. These regulations were based on a Joint Note which was signed on 23.06.1995 by the representatives of All India Bank Officers' Confederation (AIBOC), All India Bank Officers' Association (AIBOA) and Indian National Bank Officers' Congress (INBOC), thereby a package, which was worked out to be the basis for salary revision for officers in public sector banks, was accepted. Clause (7) of that Joint Note provides for gratuity, which reads as under:

> "As per the consensus reached, gratuity computed in terms of the Officers' Service Regulations to be now amended shall be recalculated and difference paid only to such eligible officer employees who cease to be in the bank's service on or after 1.11.1994. No arrears on account of gratuity shall be payable to officers who ceased to be in bank's service prior to 1.11.1994."

This underlined portion is challenged in this petition on the ground that, by this gross discriminatory treatment is meted out to the petitioner viz-a-viz the employees who retired on 01.11.1984.

3. It is a settled legal position that any settlement and/or an enactment can provide for `cut off' date. Providing a `cut off' date is not ipso facto an act of discrimination unless it is established that

persons belonging to the same class are treated differently. The Honourable the Supreme Court, having found a `cut off' date to be an artificial one, subjecting the people belonging to the same class to different treatments, has struck down such `cut off' dates. But then only because there is a `cut off' date provided the provisions providing for `cut off' date, the decision is not arbitrary one. In any enactment or settlement, on account of various factors, a `cut off' date is required to be provided. These factors are like the financial burden which is going to be caused by the benefits which are to be extended, the overall impact of such burden, which must not destroy the very structure of the institution and its working.

4. The learned advocate appearing for the petitioner strenuously contended that by providing 01.11.1984 as the `cut off' date, similarly situated employees are accorded different treatment because the employees of the Bank are divided in two classes on the basis of the date of their retirement. Hence, this decision is required to be quashed and set aside being arbitrary one. Secondly, even if it is assumed that this cut off date is provided under the settlement, the same cannot be held to be binding on the petitioners because on the date on which the settlement came into being, that is, in the year 1995 and the regulations which were framed on the basis of the settlement on July 14, 1995, the petitioners were not in service and therefore, were not even remotely connected with the said settlement.

5. This Court did not find any substance in either of the two submissions for the simple reason that as discussed hereinabove, providing a `cut off' date is by itself not ipso facto discriminatory and/or arbitrary. So far as the question about binding effect of settlement is concerned, the additional benefits, which are conferred on the employees under the very settlement, are not denied by any employee, including that of the petitioner herein. Besides, when IBA, AIBOC, AIBOA and INBOC have agreed to the settlement as a package, this Court finds hardly any reason to suspect their capacity to strike the best offer in favour of the employees.

6. The learned advocate appearing for the petitioners placed reliance on a judgement of the Honourable the Kerala High Court in the matter of Saline Thomas & others Vs. Syndicate Bank and others rendered in O.P No.3502 of 2000 dated 21.02.2002. There, the question of, `paying gratuity on the basis of salary drawn on the date of retirement, subsequent to which

revision of pay was effected and arrears on account of pay revision' were under consideration. The Court was pleased to hold that the gratuity is to be calculated on the basis of last pay drawn and under pay revision, if an employee has drawn higher pay, gratuity can be calculated only on the basis of higher pay and not on the basis of pre-revised pay. This Court is not in agreement with the said decision because in the present case the petitioners are not claiming any benefit under the Payment of Gratuity Act, in fact, they cannot claim any benefit as the petitioners are paid much higher amount than the one which is payable to them under the provisions of Payment of Gratuity Act. In this case, the matter of payment of gratuity is governed by `bipartite settlement' and therefore, it is outside the purview of the Payment of Gratuity Act. Therefore, it is not possible for this Court to agree with the view of the learned Judge of the Honourable the Kerala High Court.

6.1 The learned advocate for the petitioners next relied upon a decision of this Court in the matter of Hayatbibi Fatehkhan Sindhi Vs. State of Gujarat, in Special Civil Application No.4798 of 1987 dated 13.01.2000 to contend that if different treatment to dependents of Government servants is given by prescribing a cut off date for the purposes of grant of family pension, it offends Article 14 of the Constitution. In the present case as discussed hereinabove there is no question of giving different treatment to the persons belonging to the same class. Under a bipartite settlement, it is decided to give additional benefits, effective from a particular date and that can always be done because for conferring any benefit some date is to be provided as a starting point. Therefore, this judgement has no application to the facts of the present case.

7. As against that the learned advocate appearing for the respondents submitted that this being a matter related to a settlement, under which additional benefits are given to the officers of the Bank. There is no question of holding that settlement to be an arbitrary one only because a particular benefit is decided to be given from a particular date. The learned advocate submitted that the petitioners are not able to point out any good reason. It is not established that a different treatment is given to persons belonging to the same class, hence, there is no reason to grant any relief in this petition.

8. The learned advocate for the respondents also

submitted that the Central Bank of India (Officers') Service Regulations, 1979 are statutory in character inasmuch as the same are framed under the powers conferred under section 19 read with subsection (2) of section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. He submitted that the settlement has become part of the statute. The learned advocate relied upon a judgement of the Honourable the Apex Court in the matter of V.T. Khanzode and others Vs. Reserve Bank of India and another, reported in AIR 1982 SC 917 wherein it is observed that:

> ".. .. No scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these. .. .."

9. The learned advocate submitted that in the present case also the settlement was arrived at between the associations mentioned hereinabove, which cannot be said to be unjust and arbitrary, only because some officers who have retired before a particular date do not get some additional amount under the head of `gratuity'. The learned advocate next relied upon a judgement of the Honourable the Apex Court in the matter of State Government Pensioners' Association and others Vs. State of Andhra Pradesh, reported in AIR 1986 SC 1907, where the Honourable the Apex Court was considering the question as to:

> "Whether the provision which provides for payment of a larger amount of gratuity with prospective effect from the specified date offends Art.14 of the Constitution?"

The Honourable the Apex Court was pleased to hold that, `the provision which provides for payment of a larger amount of gratuity with prospective effect from the specified date does not offend Art.14 of the Constitution'. The Honourable the Apex Court was also pleased to observe that, `it cannot be said that no upward revision of gratuity amount can be made in harmony with Art.14 unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in

1950 and the date of upward revision'. The learned advocate invited the attention of the Court to the observations of the Honourable the Apex Court made in para 2 which read as under:

"2. We fully concur with the view of the High Court. The upward revision of gratuity takes effect from the specified date (April 1, 1978) with prospective effect. The High Court has rightly understood and correctly applied the principle propounded by this Court in Nakara's case AIR 1983 SC 130. There is no illegality or unconstitutionality (from the platform of Article 14 of the Constitution of India) involved in providing for prospective operation from the specified date. Even if that part of the Notification which provides for enforcement with effect from the specified date is struck down the provision can but have prospective operation -not retrospective operation. In that event (if the specified date line is effaced), it will operate only prospectively with effect from the date of issuance of the notification since it does not retrospectively apply to all those who have already retired before the said date. In order to make it retrospective so that it applies to all those who retired after the commencement of the Constitution on 26th January 1950 and before the date of issuance of the notification on 26th March 1980, the Court will have to re-write the notification and introduce a provision to this effect saying in express terms that it shall operate retrospectively. Merely striking down (or effacing) the alleged offending portion whereby it is made effective from the specified date will not do. And this, the Court cannot do. Besides, giving prospective operation to such payments cannot by any stretch of imagination be condemned as offending Art.14. An illustration will make it clear. Improvements in pay scales by the every nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spent and saved, on the basis of the then prevailing cost of living structure and pay scale structure, cannot invoke Art.14 in order to claim the higher pay scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Art.14, perhaps no such revision would ever be

made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystallised on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed. There is no scope for upward or downward revision in the context of upward of (sic.) downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even). It would be futile to contend that no upward revision of gratuity amount can be made in harmony with Art.14 unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in 1950, and the date of upward revision. There is therefore no escape from the conclusion that the High Court was perfectly right in repelling the petitioners' plea in this behalf. .. .. "

10. In view of the aforesaid discussion, the present petition fails and is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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